U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUL 0 3 2014 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The petitioner filed a motion to reopen and reconsider. The director reopened the matter and denied the petition again. The matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined that the petitioner had not met the requisite criteria for classification as an alien of extraordinary ability.

On appeal, the petitioner submits a brief and additional evidence. In the brief, the petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iii) – (v), (vii), and (ix).

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or

through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld our decision to deny the petition, the court took issue with our evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that our evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which we did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as we concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, we will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria[2]

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 2011) (plaintiff's claims abandoned when not raised on appeal). Accordingly, the petitioner has not established that he meets this regulatory criterion.

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[1] Specifically, the court stated that we had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

[2] On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, no determination has been made regarding whether the petitioner meets the remaining categories of evidence.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submitted a December 7, 1998 article about him in entitled . . . ," but portions of the article were omitted from the submitted photocopy.

The petitioner submitted an article about him in the Arts & Entertainment section of an unidentified newspaper entitled Again, portions of the article were omitted from the submitted photocopy. In addition, the date of the article was not identified.

The petitioner submitted a seven-sentence article posted on the of entitled but the author of the article was not identified.

The petitioner submitted a January 31, 2002 article entitled that was posted on the websites of and the The article is about the not the petitioner. The plain language of the regulation, however, requires "published material about the alien." Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor).

The petitioner submitted a March 2002 article entitled in and posted on the website, but the author of the article was not identified. In addition, the article is about the not the petitioner.

The petitioner submitted an April 2004 article posted on the website entitled but the author material was not identified. Additionally, the article is about the Foundation's inaugural exhibition and fundraiser, not the petitioner.

The petitioner submitted a language article about him entitled posted at The English language translation accompanying the article, however, did not identify the date or author of the article.

In addition to the aforementioned deficiencies, the director stated that submitted "publications are not current in nature and seem to be surrounding the years from 2002-2004." The director's finding on this particular issue, however, went beyond the plain language of the regulation and therefore is withdrawn. USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian,* 596 F.3d at 1121, *citing Love Korean Church v. Chertoff,* 549 F.3d 749, 758 (9th Cir.2008).

In addition, the director stated that the submitted evidence did not indicate that the preceding "material was published in professional or major trade publications or other major media. All of the articles from the sources that have been submitted do not show any circulation figures to establish whether they have been published in major trade publications or other major media."

In the appeal brief, the petitioner asserts: "The article in the newspaper in 2010 is a major international weekly newspaper for abroad in the United States, the U.K. and Canada. Due to the wide circulation of this paper, it shows the extraordinary ability of [the petitioner] as an artist." The petitioner also points to the article in as an example of material that is "primarily about [the petitioner] and his work as a fine artist." The petitioner's appellate submission, however, does not include evidence such as circulation figures for the preceding newspapers to demonstrate that they qualify as major media. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In light of the above, the petitioner has not established that he meets this regulatory criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The petitioner submitted an April 12, 2006 letter from Professor , Dean of the stating:

> On behalf of the ,] I . . . would like to express my deepest gratitude to [the petitioner] . . . for accepting our invitation to be a member of the jury judging the final portfolios of art students in class 2004-2005, as well as for the lectures he gave to the students of the Academy.

In the brief, the petitioner asserts that the director wrongly interpreted Professor letter only to mean that the petitioner was invited to be a judge. The petitioner points out that the letter states that he "accepted the invitation to be a judge, and did in fact judge the student portfolios." The letter from Professor was accompanied by a photocopy of a notarized English language translation that stated: "Translator from into English by " The translator, however, did not certify that the translation to English was complete and accurate, or that she was competent to translate from the foreign language into English as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. *Id.* Without a properly certified English language translation, Professor letter cannot be relied upon as evidence.

The petitioner's appellate submission includes an affidavit stating:

> I was invited to be a judge at the by Professor for the 2004 to 2005 school year.
>
> * * *
>
> I was member of the jury judging the final art portfolios for the graduating students of the Academy for the 2004-2005 school year. I reviewed the art portfolios for technique, skill, progress, artistic contributions, and general overall appearance.

With regard to the petitioner's affidavit, the nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Absent documentation that primary and secondary evidence of the petitioner's participation as a judge is either not available or nonexistent, his affidavit cannot be relied upon as evidence. 8 C.F.R. § 103.2(b)(2).

In addition, the petitioner's brief points to an April 3, 2013 letter from Professor Rector of the that stated: "We are currently holding negotiation for a possible 2014 exhibition and we invited [the petitioner] to read lectures in front of our students of the We strongly believe that the exhibition and lectures in 2014 will be perceived with extraordinary interest from the students . . . ." An invitation to exhibit one's artwork and to lecture art students does not constitute participation as a judge of the work of others. Furthermore, there is no documentary evidence showing that the petitioner had participated as a judge of the work of others for the at the time of filing the petition on March 20, 2013. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, the letter from Professor mentioning the petitioner's invitation to the in 2014 cannot be considered as evidence to establish the petitioner's eligibility at the time of filing.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The director determined that the petitioner established eligibility for this criterion. The plain language of this criterion requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must rise to the level of original artistic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich*

Multiple Investor Fund, L.P., 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). For the reasons outlined below, a review of the record of proceeding does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion and the director's determination on this issue will be withdrawn.

The petitioner submitted various letters of support discussing his artistic qualities and activities in the field.

In his April 28, 2011 letter, Professor stated:

> [The petitioner] has been living, working and displaying his pictures beyond the borders of for 20 years, however he is well-know [sic] and appreciated in the artistic circles and by the cultural public in our country.
>
> The pictures of [the petitioner] bring the message for the good beginning, harmony, love and romance; they contribute to the preservation of the authentic human merits. They are expressive, with intensive color and exceptionally individual style of an author.
>
> The figure compositions of [the petitioner] have clear and accurate graphic compositions with typical distinctive nature. Every canvas has its own philosophy, meaning and unique atmosphere.

Dr. describes the petitioner's artistic qualities, and points out that the petitioner's artwork has been displayed outside of and that it is appreciated in his country, but fails to provide specific examples of how the petitioner's work has substantially impacted the visual arts field, has influenced the work of other artists, or otherwise equates to an original contribution of major significance in the field. It is not enough to be a talented artist and to have others attest to that talent. An individual must have demonstrably impacted his field in order to meet this regulatory criterion.

, Academician Professor, stated:

> [The petitioner] is one of those rare exceptions in modern art that carry distinctive plastic poetry, combining the purity of fairy sensitivity with the sharpness of an expressive, as sensitivity and stylistics, plastic paintings.
>
> At the time of total information, when the world of art is known in its entire historical development and most of the artists are related to its classical or alternative forms – the pictures of [the petitioner], with their irony and vitality, more and more turn us back to the sources of the emotional human good-willingness.
>
> It is interesting the fact that [the petitioner] started and established his carrier [sic] already over 20 years abroad – in Europe and America, not only as an artist but as a gallerist too.

> [The petitioner] shows in his galleries in Prague and Chicago the pictures, drawings and sculptures of famous artists – Prof. and others.
>
> [The petitioner] is the founder of the American gallery and the first, entirely in Chicago. Artists like [the petitioner] are a phenomenon in modern art. A creative sensitivity – an artist that will be more and more needed tomorrow.

Dr. comments on the petitioner's artistic style and creative talent, mentions that the petitioner has opened galleries in Prague and Chicago, and asserts that the petitioner is "a phenomenon in modern art," but does not identify specific examples of how the petitioner's work has influenced the field or otherwise constitutes original contributions of major significance in the field of modern art. Vague, solicited letters from colleagues that do not specifically identify original contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian*, 580 F.3d at 1036. In 2010, the *Kazarian* court reiterated that conclusion was "consistent with the relevant regulatory language." 596 F.3d at 1122.

a real estate businessman and art collector residing in Chicago, stated:

> I met [the petitioner] and his family on a trip to Prague in November 2000. . . . We struck-up a very good relationship over a few days and I ended-up investing (i.e. purchasing) a number of [the petitioner's] paintings. [The petitioner] and his family and I kept in touch and I returned to Prague in the spring of 2001. During my visit I purchase [sic] an additional five paintings and purposed [sic] the idea of [the petitioner] coming to live in the United States.... [The petitioner] and his family moved to Chicago on September 10, 2001 and later that year opened in Chicago's neighborhood.
>
> * * *
>
> [The petitioner] was the featured artist and was extremely well received by the public. His work was heralded as being fresh, whimsical, creative and heartfelt. His work sold extremely well even during a time of what I refer to as depression in the art business. [The petitioner] and his family moved back to Prague in the spring of 2002 to run their gallery. [The petitioner] continued to sell his artwork in the United States through in Chicago and in Michigan.
>
> [The petitioner] and his family have visited me in Chicago many times over the past few years. I have continued to marvel at the quality of his work. During this time I have also continued to collect [the petitioner's] work; amassing a collection in excess of fifty paintings in the process. To me, the collection is both a love of the artwork and a diversification of an investment portfolio. I have no doubts that [the petitioner's] artwork will continue to escalate in value. He is a terrific artist and is well recognized within the European art world. With the proper exposure, [the petitioner] will continue to gain recognition in the United States as well.

Mr. states that he has amassed a collection of more than fifty of the petitioner's paintings, that the petitioner has been "well received by the public," and that the petitioner's work has "sold extremely well." Mr. further states that the petitioner "is well recognized within the European art world," but he does not provide specific examples of the petitioner's artworks that have influenced the field or otherwise constitute original artistic contributions of "major significance" in modern art. USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, Mr. comments on the quality of the petitioner's artwork, and states that it "will continue to escalate in value" and that the petitioner "will continue to gain recognition in the United States." Speculation about the possible future impact of the petitioner and his work is not evidence, and cannot establish eligibility for this regulatory criterion. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. There is no documentary evidence demonstrating that the petitioner has already significantly influenced other artists in the field, that any of his specific works are widely viewed as masterpieces of modern contemporary art, or that his original work otherwise equates to artistic contributions of major significance in the field.

In an April 8, 2006 letter addressed to the petitioner, Executive Director, Michigan, stated:

> On behalf of The I would like to thank you for exhibiting your work with us over these past seven years. As you know, I hold your artistic integrity and innate artistic talents in the highest esteem. The truth is, your work moves people because it gets to the heart of what it is to be human. Your paintings are filled with hope and joy, a rare quality in most artists today.
>
> Not only was your work well received by our discriminating clientele, you have become a fixture in the community. . . . We at the of course, look forward to many years of continued collaboration. We consider you among a small number of artists in our "stable."
>
> Our local media was extremely receptive to your talent and drive, comparing you to Picasso and Miro and profiling your extraordinary talent and personal back-story. You and your work have been featured eleven times in local newspapers and cable TV.
>
> On top of all that success your sales performance was as inspiring as the artwork itself. In the seven years of our affiliation we placed over 25 original paintings in homes and offices in our community. Many clients have purchased several of your works for their collections.
>
> Your loyalty to our gallery is another example of your dedication to your career and an important aspect of your personal integrity. You have always been there for us when it was time to mount another exhibit. We appreciate too, your protecting the value of your work by being consistent with your pricing across several markets.

The preceding letter from Mr. thanks the petitioner for exhibiting his work at the With regard to the petitioner's participation in exhibitions at the and other art venues, the regulations contain a separate criterion for display of work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). Evidence relating to or even meeting the display criterion is not presumptive evidence that the petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for artistic display and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

In addition, Mr. comments that "[m]any clients have purchased several of [the petitioner's] works for their collections" and that the has "placed over 25 original paintings in homes and offices in our community." Although Mr. statements indicate that his gallery has sold many of the petitioner's paintings, there is no evidence demonstrating that having one's artwork purchased by others equates to original contributions of major significance in the field. Rather, it demonstrates only that the petitioner has the ability to earn a living as an artist. The plain language of this criterion requires that the petitioner's contributions be "of major significance in the field" rather than limited to the galleries with which he is affiliated or his art buyers. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

Mr. further states that the petitioner received "local media" coverage in which he was compared to "Picasso and Miro." Mr. , however, does not provide specific examples of how the petitioner's artwork has impacted the field in the same manner as that of Picasso and Miro, the influential artists to whom the petitioner was specifically compared, or of how the petitioner's work was otherwise majorly significant to the field. There is no documentary evidence showing the extent of the petitioner's influence on other modern artists in the field or indicating that the field has specifically changed as a result of his original work so as to demonstrate the major significance of his contributions.

an art collector residing in Singapore, stated:

> I have personally known [the petitioner] since 1992 and currently I own over 35 of his artworks. The artist's compositions are full of ideas and symbols and have baffled me with their vibrant expression and colors.
>
> It has been my pleasure to watch the artist progress. He started off by taking part in group exhibitions and rose up to opening his own art gallery in the city of Prague in the Czech Republic. [The petitioner] established himself as one of the leading artists in Europe over the next few years after opening his first art gallery. Regardless of his vast progress the artist has always stuck to his unique and exclusive style without being influenced by the rest of the art world. An important factor in his advancement is the growth of the value of his paintings over the years. The paintings of [the petitioner] paintings have grown at least ten times compared to when he first came out as a painter.

> [The petitioner's] professional and individual style has brought his paintings to many private collections all over the world. His artwork has even been included in one of the most well-known and the largest European Prof. [ ] located in Germany, it is currently owned by the Republic of Germany.
>
> Personally, I have followed [the petitioner's] appearance and success in the American art business. On a trip to MI I was able to visit the where he has had numerous exhibitions and is one of the best-selling artists which was confirmed by the owner of the gallery, I was very excited to be invited to the grand opening of [the petitioner's] very own art gallery in the United States, located in the district of Chicago, IL. Unfortunately I was unable to attend this event due to the fact that my business is located in Asia. Part of my [the petitioner] collection is located in my home and office in Singapore and is the source of endless compliments and interests from my friends and colleagues.

Mr asserts that the petitioner "established himself as one of the leading artists in Europe," but does not explain how the petitioner's artwork has specifically affected the field of modern art or otherwise equates to original contributions of major significance in the field. Again, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 15. In addition, Mr. asserts that the petitioner's "paintings have grown at least ten times" in value "compared to when he first came out as a painter." Mr. however, does not provide any specific dollar amounts or appraisal information to support the claim. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Regardless, the fact that the petitioner's paintings have grown in value since he began painting several decades ago does not automatically demonstrate that his work has had major significance in the field.

Mr. further states that the petitioner's work has been included in "many private collections all over the world" and in the Professor owned by the government of Germany. Additionally, Mr. mentions the petitioner's gallery exhibitions in Chicago and Again, the regulations contain a separate criterion for display of work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). Absent documentation of specific contributions that were of major significance in the field, display of the petitioner's artwork in various collections and exhibitions is not sufficient evidence under this criterion. Mr. does not provide specific examples of how the petitioner's artwork has influenced the work of other contemporary artists or has otherwise impacted the field of modern art at a level indicative of artistic contributions of major significance in the field.

The petitioner submitted letters of varying probative value. Some letters are generalized, without identifying specific contributions or their impact in the field, and thus have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 17.); s*ee also Visinscaia*, 2013 WL 6571822, at *6 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert

testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable").

The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *Id.* Without additional, specific evidence showing that the petitioner's artwork has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that he meets this regulatory criterion. Accordingly, the director's finding that the petitioner's evidence meets this regulatory criterion is withdrawn.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submitted documentation showing that he has displayed his work in the field at artistic exhibitions or showcases and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vii). Accordingly, the director's finding that the petitioner's evidence meets this regulatory criterion is affirmed.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted the following:

1. A "Record of Consignment" dated November 19, 2002 from the listing multiple paintings by the petitioner at retail prices ranging from $500 to $2,500;
2. A "Record of Consignment" dated February 10, 2002 from the listing multiple paintings by the petitioner at suggested retail prices ranging from $1,750 to $35,000;
3. An undated "Record of Consignment" from the listing multiple paintings by the petitioner at retail prices ranging from $220 to $4,100;
4. A May 28, 2009 letter from stating that he owns more than 25 of the petitioner's artworks and that the "paintings have grown at least ten times compared to when he first came out as a painter" (the letter does not specify the amounts paid to the petitioner);
5. An April 25, 2006 letter from Chairman of Management in , Germany, stating that his company "sold 12 paintings" by the petitioner (the letter does not specify the amounts paid to the petitioner);
6. Numerous e-mails from buyers who purchased paintings from the petitioner confirming their receipt of his artwork (some of the e-mails mention prices ranging from $300 to $3,200);
7. A March 11, 2013 letter from the owner of in Chicago stating: ' is eager to propose to you a position as an

interior design consultant for our [redacted] to assist with creating a mural for the main hall. This project is set to start on the 15th of May, 2013. At the start of this project you will be compensated $4,000 USD, which is 15% of your total wages, totaling $25,000 at completion";

8. An April 7, 2013 notification from [redacted] informing the petitioner of his "one-man-show" exhibition at the company's headquarters building conference hall on August 17, 2013 and listing retail prices for eighteen of the petitioner's paintings ranging from $1,250 to $3,300; and
9. A September 2, 2013 letter from [redacted] the petitioner's art manager, commenting on her fifteen-year partnership with the petitioner, and stating that she "sold around 3000 oil on canvas paintings and over 1500 watercolor artworks" (the letter does not specify the amounts paid to the petitioner).

The director stated that the records of consignment from 2002 (items 1 and 2) were "over 10 years old" and thus did not meet the requirements of this criterion. Again, as the director's finding on this particular issue went beyond the plain language of the regulation, it is therefore withdrawn.

In the appeal brief, the petitioner points to items 1 through 9 above as evidence that he meets this regulatory criterion. The petitioner asserts that he "has received high praise, a loyal following, and high prices for his artwork." With regard to items 1 through 9, the petitioner failed to submit documentary evidence of actual earnings (such as government income tax forms) to demonstrate the remuneration he received for his artwork. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Regarding items 7 and 8, any remuneration received by the petitioner post-dates the filing the petition. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the remuneration received by the petitioner in May 2013 and August 2013 cannot be considered as evidence to establish his eligibility at the time of filing.

Furthermore, the petitioner must present evidence of objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); s*ee also Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers). The petitioner, however, offers no basis for comparison showing that he has received significantly high remuneration relative to other artists who perform similar work.

As the petitioner did not submit evidence of his actual earnings, and present a proper basis for comparison showing that his remuneration was significantly high relative to his peers, the petitioner has not established that he meets this regulatory criterion.

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

C. Prior O-1 Nonimmigrant Visa Status

The record reflects that the petitioner is the beneficiary of approved O-1 nonimmigrant visa petitions for an alien of extraordinary ability in the arts. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, "The term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1 regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(o)(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines extraordinary ability as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner's receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability. Further, approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each petition must be decided on a case-by-case basis upon review of the evidence of record.

Many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS is not required to treat acknowledged errors as binding precedent. *See Sussex Eng'g Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, we would not be bound to follow the contradictory decision of a service center.

Louisiana Philharmonic Orchestra v. INS, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La. Mar. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. Although we conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, we need not explain that conclusion in a final merits determination.[3] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

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[3] In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).